

EXHIBIT C

RECEIVED

MAY 8 2009

1 MICHAEL R. SIMMONDS (SBN 96238)
TOMIO B. NARITA (SBN 156576)
2 JEFFREY A. TOPOR (SBN 195545)
SIMMONDS & NARITA LLP
3 44 Montgomery Street, Suite 3010
San Francisco, CA 94104-4816
4 Telephone: (415) 283-1000
Facsimile: (415) 352-2625
5 msimmonds@snllp.com
tnarita@snllp.com
6 jtopor@snllp.com

7 Attorneys for Defendants
8 Collins Financial Services, Inc. and
Nelson & Kennard
9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 DAVID TOURGEMAN,

14 Plaintiff,

15 vs.

16 COLLINS FINANCIAL SERVICES,
17 INC., a corporation; NELSON &
KENNARD, a partnership, DELL
18 FINANCIAL SERVICES, L.P., a
limited partnership; DFS
19 ACCEPTANCE, a corporation, DFS
PRODUCTION, a corporation,
20 AMERICAN INVESTMENT BANK,
N.A., a corporation; and DOES 1
21 through 10, inclusive,

22 Defendants.
23

CASE NO. 08-CV-1392 JLS NLS

**DEFENDANT NELSON &
KENNARD'S RESPONSE TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION, SET ONE**

24 PROPOUNDING PARTY:

Plaintiff DAVID TOURGEMAN

25 RESPONDING PARTY:

Defendant NELSON & KENNARD

26 SET NO.:

ONE
27
28

1 Defendant Nelson & Kennard ("Defendant") hereby objects and responds to
2 plaintiff David Tourgeman's ("Plaintiff") Requests for Production of Documents, Set
3 One as follows:

4
5 **PRELIMINARY STATEMENT**

6 Defendant has not completed its investigation and discovery in this action. The
7 responses are based only upon Defendant's knowledge as of the date of these
8 responses, and are given without prejudice to Defendant's right to produce
9 subsequently discovered information or documents.

10
11 **GENERAL OBJECTIONS**

12 The General Objections asserted below shall be deemed to be applicable to
13 each of Plaintiff's Requests, and are incorporated into each and every specific
14 response to each Request set forth. Such General Objections are not waived, nor in
15 any way limited by any further objection to any specific Request.

16 A. Defendant objects to each Request to the extent that it is overbroad and
17 subjects Defendant to unreasonable and undue annoyance, oppression, burden and
18 expense and seeks information which is not relevant to the subject matter of this
19 lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

20 B. Defendant objects to each Request to the extent that it seeks materials
21 which are not in the possession, custody or control of Defendant and/or which are
22 equally or more readily available to Plaintiff.

23 C. To the extent that any Request, Definition or Instruction may be construed
24 as requiring Defendant to characterize documents or their contents or to speculate as
25 to what documents may or may not show, Defendant objects to such Request as
26 vague, ambiguous and calling for legal conclusions and speculation.

27 D. Defendant objects to each Request to the extent it seeks information which
28 constitutes, reflects, or contains communications between counsel and Defendant on

1 the grounds that such communications are protected from discovery by virtue of the
2 attorney-client privilege, the joint defense privilege, or any other recognized privilege
3 or immunity. Defendant further objects to each Request to the extent it calls for
4 information that may reflect or contain attorney work product, on the grounds that
5 such information is protected from discovery by virtue of the attorney work product
6 doctrine.

7 E. Defendant objects to each and every Request to the extent that it seeks
8 proprietary information, trade secrets, or information subject to protective orders,
9 confidentiality agreements, or statutory provisions that bar the disclosure of that
10 information without the consent of third parties.

11 F. In responding to Plaintiff's Requests, to the extent not otherwise objected
12 to, Defendant has used reasonable diligence to locate responsive documents and
13 things. To the extent Plaintiff seeks to require Defendant to do more than that,
14 Defendant objects to each Request, on the grounds it is overly broad, oppressive and
15 unduly burdensome.

16 G. Defendant objects to each and every Request to the extent such Requests
17 seek to impose obligations beyond those permitted under the Rules of Civil
18 Procedure.

19 H. Defendant objects to each and every Request to the extent such Requests
20 call for production of pleadings or other materials already produced in this case.

21 I. Defendant objects to Plaintiff's definitions of the defined terms
22 "NELSON," "YOU" and "YOUR" as overbroad, vague and ambiguous, and to the
23 extent that by using such terms as defined by Plaintiff, Plaintiff seeks documents not
24 in the possession, custody or control of Defendant. Unless otherwise indicated,
25 Defendant will only produce documents and information maintained by defendant
26 Nelson & Kennard.

27 //

28 //

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS

DOCUMENT REQUEST NO. 1:

Please produce ALL COMMUNICATIONS between NELSON and COLLINS that RELATE TO Plaintiff David Tourgeman and the collection of his alleged debt. To the extent that these communications need to be redacted for privilege, please provide Plaintiff with a privilege log as described above.

RESPONSE TO DOCUMENT REQUEST NO. 1:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties and to the extent that it seeks information subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the forgoing objections or the General Objections, Defendant will produce all documents in its possession, custody or control that relate to Plaintiff, his account, or the defenses asserted in this action.

DOCUMENT REQUEST NO. 2:

Please produce ALL training materials RELATING TO the collection of debts YOU provide to NELSON employees.

RESPONSE TO DOCUMENT REQUEST NO. 2:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the

1 discovery of admissible evidence. Defendant further objects to this Request to the
2 extent that it seeks proprietary information, trade secret information, information
3 subject to protective orders, confidentiality agreements, or statutory provisions that
4 bar the disclosure of that information without the consent of third parties and to the
5 extent that it seeks information subject to the attorney-client privilege or the attorney
6 work product doctrine.

7 Subject to and without waiving the forgoing objections or the General
8 Objections, upon entry of a protective order by the Court, Defendant will produce
9 non-privileged documents that relate to the claims and defenses in this action that are
10 responsive to this Request.

11
12 **DOCUMENT REQUEST NO. 3:**

13 Please produce ALL DOCUMENTS CONCERNING the duties and
14 responsibilities of NELSON employees who receive data RELATING to alleged
15 debts.

16 **RESPONSE TO DOCUMENT REQUEST NO. 3:**

17 Defendant objects to this Request on the grounds that it is vague and
18 ambiguous as to the term "receive data RELATING to alleged debts." Nelson &
19 Kennard is a debt collection law firm and the request could be read to cover virtually
20 every employee of the firm. Defendant also objects to this Request on the grounds
21 that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks
22 information which is not relevant to the subject matter of this lawsuit, nor reasonably
23 calculated to lead to the discovery of admissible evidence. Defendant further objects
24 to this Request to the extent that it seeks proprietary information, trade secret
25 information, information subject to protective orders, confidentiality agreements, or
26 statutory provisions that bar the disclosure of that information without the consent of
27 third parties and to the extent that it seeks information subject to the attorney-client
28 privilege or the attorney work product doctrine.

1 Subject to and without waiving the forgoing objections or the General
2 Objections, Defendant is willing to meet and confer with Plaintiff to discuss the scope
3 of this request and any response thereto.

4
5 **DOCUMENT REQUEST NO. 4:**

6 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and
7 guidelines for investigating alleged debts.

8 **RESPONSE TO DOCUMENT REQUEST NO. 4:**

9 Defendant objects to this Request on the grounds that it is vague and
10 ambiguous as to the term "investigating alleged debts." Nelson & Kennard is a debt
11 collection law firm, not an investigation firm. It does not "investigate" debts, as it
12 understands that term to be used.

13
14 **DOCUMENT REQUEST NO. 5:**

15 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and
16 guidelines for filing a lawsuit against an alleged debtor.

17 **RESPONSE TO DOCUMENT REQUEST NO. 5:**

18 Defendant objects to this Request on the grounds that it is overbroad, unduly
19 burdensome and oppressive, and to the extent that it seeks information which is not
20 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
21 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a
22 number of clients. The request is so vague and broad and written it could potentially
23 be read to request copies of every document maintained by the firm.

24 Subject to and without waiving the forgoing objections or the General
25 Objections, Defendant is willing to meet and confer with Plaintiff to discuss this
26 request and the scope of any response.

27 //

28 //

DOCUMENT REQUEST NO. 6:

Please produce ALL DOCUMENTS that RELATE TO YOUR policies and guidelines for dismissing a complaint against an alleged debtor.

RESPONSE TO DOCUMENT REQUEST NO. 6:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard is a collection law firm with a number of clients. Decisions to dismiss particular lawsuits on behalf of particular clients will necessarily be made on a case by case basis. Documents relating to Plaintiff and the litigation relating to his account will be produced, but the firm will not agree to produce all documents that relate to its decision to dismiss other cases on behalf of other clients.

DOCUMENT REQUEST NO. 7:

Please produce ALL form letters, enclosures, envelopes, complaints, memoranda, etc. used by NELSON in its debt collection activity.

RESPONSE TO DOCUMENT REQUEST NO. 7:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard is a collection law firm with a number of clients. Documents relating to Plaintiff and the litigation relating to his account will be produced, but the firm will not agree to produce all documents that relate to other cases filed on behalf of other clients.

//

//

//

DOCUMENT REQUEST NO. 8:

Please produce ALL DOCUMENTS that RELATE TO YOUR investigation of Plaintiff David Tourgeman's alleged debt.

RESPONSE TO DOCUMENT REQUEST NO. 8:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "investigation." Nelson & Kennard is a collection law firm, not an investigation firm. The firm does not required by law to conduct an independent investigation into the accounts that are placed with it for collection. Subject to and without waiving the forgoing objections or the General Objections, Defendant will produce non-privileged documents in its possession, custody or control that relate to Plaintiff, his account or the defenses asserted in this action.

DOCUMENT REQUEST NO. 9:

Please produce ALL DOCUMENTS that RELATE TO any communications between YOU and COLLINS regarding collection practices and procedures.

RESPONSE TO DOCUMENT REQUEST NO. 9:

Defendant objects to this Request on the grounds that it is vague and ambiguous with respect to the term "regarding collection practices and procedures." Subject to and without waiving the forgoing objections or the General Objections, Defendant responds as follows: No such documents exist.

DOCUMENT REQUEST NO. 10:

Please produce ALL complaints YOU filed on behalf of COLLINS from July 31, 2007 to the present suing for breach of contract or under Rule 3.740 "collections cases."

RESPONSE TO DOCUMENT REQUEST NO. 10:

Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which

1 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead
2 to the discovery of admissible evidence. Complaints filed by Nelson & Kennard
3 against other debtors have no bearing on this action. Defendant does not concede that
4 Plaintiff may pursue this action as a purported class action nor does Defendant
5 concede that, even if class treatment were appropriate, that a class action is proper
6 here, or that Plaintiff is a proper class representative with standing to pursue claims
7 on behalf of a purported class. At best, the Request is premature.

8
9 **DOCUMENT REQUEST NO. 11:**

10 Please produce ALL DOCUMENTS that RELATE TO financial arrangements
11 between YOU and COLLINS.

12 **RESPONSE TO DOCUMENT REQUEST NO. 11:**

13 Defendant objects to this Request on the grounds that it is vague and
14 ambiguous as to the term "financial arrangements." Subject to the forgoing,
15 Defendant responds as follows: No such documents exist.

16
17 **DOCUMENT REQUEST NO. 12:**

18 Please produce ALL DOCUMENTS pertaining to the number of alleged
19 debtors that YOU filed complaints against from July 31, 2007 to the present.

20 **RESPONSE TO DOCUMENT REQUEST NO. 12:**

21 Defendant objects to this Request on the grounds that it is overbroad, unduly
22 burdensome and oppressive, and to the extent that it seeks information which is not
23 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
24 discovery of admissible evidence. Defendant does not concede that Plaintiff may
25 pursue this action as a purported class action nor does Defendant concede that, even
26 if class treatment were appropriate, that a class action is proper here, or that Plaintiff
27 is a proper class representative with standing to pursue claims on behalf of a
28 purported class. At best, the Request is premature.

1 **DOCUMENT REQUEST NO. 13:**

2 Please produce ALL DOCUMENTS pertaining to the number of alleged
3 debtors that YOU mailed letters to requesting payment of an alleged debt from July
4 31, 2007 to the present.

5 **RESPONSE TO DOCUMENT REQUEST NO. 13:**

6 Defendant objects to this Request on the grounds that it is overbroad, unduly
7 burdensome and oppressive, and to the extent that it seeks information which is not
8 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
9 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a
10 number of clients. Letters sent by the firm to other debtors on behalf of other clients
11 have no bearing on this case.

12
13 **DOCUMENT REQUEST NO. 14:**

14 Please produce ALL DOCUMENTS that RELATE TO YOUR 1692g notices,
15 including but not limited to every sample collection letter YOU send to alleged
16 debtors.

17 **RESPONSE TO DOCUMENT REQUEST NO. 14:**

18 Defendant objects to this Request on the grounds that it is overbroad, unduly
19 burdensome and oppressive, and to the extent that it seeks information which is not
20 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
21 discovery of admissible evidence. Nelson & Kennard is a collection law firm with a
22 number of clients. There is no legitimate basis for requesting copies of section 1692g
23 notices sent to other debtors in connection with representing other clients.

24 Subject to and without waiving the forgoing objections or the General
25 Objections, Defendant will produce non-privileged documents that relate to Plaintiff,
26 his account and the defenses in this action.

1 **DOCUMENT REQUEST NO. 15:**

2 Please produce ALL DOCUMENTS RELATING TO the procedures and
3 guidelines YOU set to collect debts.

4 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

5 Defendant objects to this request on the grounds that it is vague and ambiguous
6 as to the term "procedures and guidelines." Defendant objects to this Request on the
7 grounds that, as understood by Defendant, it is overbroad, unduly burdensome and
8 oppressive, and to the extent that it seeks information which is not relevant to the
9 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
10 admissible evidence. Nelson & Kennard is a collection law firm, and virtually every
11 piece of paper or electronic document it maintains could arguably "relate" to the
12 collection process and could be construed as responsive.

13 Subject to and without waiving the forgoing objections or the General
14 Objections, upon entry of a protective order by the Court, Defendant will produce
15 non-privileged documents that relate to Plaintiff, his account, and the defenses in this
16 action.

17
18 **DOCUMENT REQUEST NO. 16:**

19 Please produce ALL copies of the complaint in any litigation filed against
20 NELSON alleging violations of the Fair Debt Collection Practices Act and the
21 Rosenthal Act.

22 **RESPONSE TO DOCUMENT REQUEST NO. 16:**

23 Defendant also objects to this Request on the grounds that it is overbroad,
24 unduly burdensome and oppressive, and seeks information which is not relevant to
25 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
26 admissible evidence. Complaints filed by other debtors regarding other sets of facts
27 have no bearing on the claims or defenses in this action. Defendant also objects to
28

1 this Request on the grounds that the documents requested, if any exist, are a matter of
2 public record, equally available to Plaintiff.

3
4 **DOCUMENT REQUEST NO. 17:**

5 Please produce ALL DOCUMENTS that RELATE TO YOUR policy for the
6 retention and destruction of records, DOCUMENTS, or files from July 31, 2007 to
7 the present.

8 **RESPONSE TO DOCUMENT REQUEST NO. 17:**

9 Defendant objects to this Request on the grounds that it is overbroad, unduly
10 burdensome and oppressive, and seeks information which is not relevant to the
11 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
12 admissible evidence.

13 Subject to and without waiving the forgoing objections or the General
14 Objections, Defendant will produce non-privileged documents in its possession,
15 custody or control, to the extent any exist, that are responsive to this Request.

16
17 **DOCUMENT REQUEST NO. 18:**

18 Please produce ALL DOCUMENTS that RELATE TO the complaint YOU
19 filed in San Diego Superior Court on August 2, 2007. Case No. 37-2007-00072265-
20 CL-CL-CTL ("*Collins v. Tourgeman*"), including, but not limited to, all documents
21 YOU relied on in drafting the complaint.

22 **RESPONSE TO DOCUMENT REQUEST NO. 18:**

23 Subject to and without waiving the forgoing objections or the General
24 Objections, Defendant will produce non-privileged documents in its possession,
25 custody or control that are responsive to this Request.

26 //

27 //

28 //

1 **DOCUMENT REQUEST NO. 19:**

2 Please produce ALL DOCUMENTS relating to the maintenance of procedures
3 by NELSON adopted to avoid any violation of the Fair Debt Collection Practices Act
4 and the Rosenthal Act.

5 **RESPONSE TO DOCUMENT REQUEST NO. 19:**

6 Defendant objects to this Request on the grounds that it is overbroad, unduly
7 burdensome and oppressive, and to the extent that it seeks information which is not
8 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
9 discovery of admissible evidence.

10 Subject to and without waiving the forgoing objections or the General
11 Objections, upon entry of a protective order by the Court, Defendant will produce
12 non-privileged documents that relate to the bona fide error defense in this action.

13
14 **DOCUMENT REQUEST NO. 20:**

15 Please produce ALL material, including video and audio tapes, pertaining to
16 training by or for NELSON and its employees regarding the Fair Debt Collection
17 Practices Act and the Rosenthal Act.

18 **RESPONSE TO DOCUMENT REQUEST NO. 20:**

19 Defendant objects to this Request on the grounds that it is overbroad, unduly
20 burdensome and oppressive, and to the extent that it seeks information which is not
21 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
22 discovery of admissible evidence.

23 Subject to and without waiving the forgoing objections or the General
24 Objections, upon entry of a protective order by the Court, Defendant will produce
25 non-privileged documents that relate to the bona fide error defense in this action.

26 //

27 //

28 //

1 **DOCUMENT REQUEST NO. 21:**

2 Please produce ALL DOCUMENTS RELATING TO insurance policies
3 covering NELSON for violation of the Fair Debt Collection Practices Act and the
4 Rosenthal Act.

5 **RESPONSE TO DOCUMENT REQUEST NO. 21:**

6 Defendant objects to this Request on the grounds that it is overbroad, unduly
7 burdensome and oppressive, and to the extent that it seeks information which is not
8 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
9 discovery of admissible evidence. Nelson & Kennard has not tendered the defense of
10 this action to any insurance carrier so there are no relevant responsive documents.

11
12 **DOCUMENT REQUEST NO. 22:**

13 Please produce ALL DOCUMENTS that RELATE TO an investigation of
14 NELSON by an AGENCY for violations of California's Unfair Competition Laws,
15 the Federal [sic] Debt Collection Practices Act and the Rosenthal Act.

16 **RESPONSE TO DOCUMENT REQUEST NO. 22:**

17 Defendant objects to this Request on the grounds that it is overbroad, unduly
18 burdensome and oppressive, and to the extent that it seeks information which is not
19 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
20 discovery of admissible evidence. Subject to and without waiving the forgoing
21 objections or the General Objections, there are no such investigations and there are no
22 responsive documents.

23
24 **DOCUMENT REQUEST NO. 23:**

25 Please produce ALL DOCUMENTS that RELATE TO NELSON's procedures
26 to verify alleged debts when received from a debt collector client, including but not
27 limited to, COLLINS.

28 //

RESPONSE TO DOCUMENT REQUEST NO. 23:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the terms "verify alleged debts." Nelson & Kennard is a collection law firm. To the extent that it understands the term "verify" as used in this request, the firm does not have a legal obligation to independently verify the debts that are forwarded by its clients. Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard has a number of clients. There is no legitimate basis for seeking discovery concerning the handling of accounts forwarded by other clients of the firm.

Subject to and without waiving the forgoing objections or the General Objections, upon entry of a protective order by the Court, Defendant will produce non-privileged documents that relate to Plaintiff, his account, and the defenses in this action.

DOCUMENT REQUEST NO. 24:

Please produce ALL DOCUMENTS that RELATE TO the retention agreements, including the retention agreements themselves (or other operative document describing the respective duties and obligations of client and attorney), if any, between NELSON and COLLINS.

RESPONSE TO DOCUMENT REQUEST NO. 24:

Subject to and without waiving the General Objections, Defendant will produce non-privileged documents in its possession, custody or control, if any exist, that are responsive to this Request.

//

//

//

DOCUMENT REQUEST NO. 25:

Please produce ALL DOCUMENTS that RELATE TO NELSON's policies and procedures for settling alleged debts with debtors.

RESPONSE TO DOCUMENT REQUEST NO. 25:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the terms "policies and procedures for settling." Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Nelson & Kennard is a collection law firm with a number of different clients. Cases are settled on an individual basis depending on the facts and circumstances that are present at the time the settlement is consummated. There is no legitimate basis for seeking discovery regarding the settlement of debts that are forwarded to the firm by other clients.

DOCUMENT REQUEST NO. 26:

Please produce ALL DOCUMENTS that RELATE TO NELSON's revenue for each calendar year from 2005 to the present, including but not limited to financial summaries, period reports, tax returns and financial statements.

RESPONSE TO DOCUMENT REQUEST NO. 26:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks confidential financial information.

//

//

//

DOCUMENT REQUEST NO. 27:

Please produce ALL DOCUMENTS that RELATE TO NELSON's phone calls, including but not limited to phone records and call logs, placed to David Tourgeman, Cesar Tourgeman, Rebecca Tourgeman or anyone else for the purposes of collecting David Tourgeman's alleged debt.

RESPONSE TO DOCUMENT REQUEST NO. 27:

Subject to and without waiving the General Objections, Defendant will produce non-privileged documents in its possession, custody or control that relate to Plaintiff, his account or the defenses asserted in this action.

DOCUMENT REQUEST NO. 28:

Please produce ALL DOCUMENTS that RELATE TO NELSON's processes for receiving the transmitted account information of debtors from COLLINS.

RESPONSE TO DOCUMENT REQUEST NO. 28:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "processes for receiving the transmitted account information of debtors." As Defendant understands the request, there are no responsive documents.

DOCUMENT REQUEST NO. 29:

Please produce ALL DOCUMENTS that RELATE TO NELSON'S contracts with skip-tracing services and other data providers YOU use to find current information for any alleged debtor.

RESPONSE TO DOCUMENT REQUEST NO. 29:

Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

1 DATED: May 5, 2009

SIMMONDS & NARITA LLP
MICHAEL R. SIMMONDS
TOMIO B. NARITA
JEFFREY A. TOPOR

2
3
4
5 By: 

6 Tomio B. Narita
7 Attorneys for Defendants
8 Collins Financial Services, Inc. and
9 Nelson & Kennard
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

- 1) **DEFENDANT NELSON & KENNARD'S RESPONSE TO PLAINTIFF'S REQUESTS FOR PRODUCTION, SET ONE**

by causing such document to be mailed to the address indicated below:

VIA U.S. MAIL

Daniel P. Murphy
4691 Torrey Circle A306
San Diego, CA 92130
counsel for Plaintiff

Francis A. Bottini
Frank J. Johnson
Derek J. Wilson
Johnson Bottini, LLP
655 West Broadway, Suite 1400
San Diego, CA 92101
counsel for Plaintiff

//

//

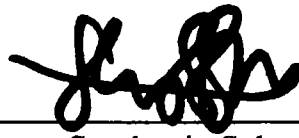
//

//

//

1 Scott J. Ferrell and Lisa A. Wegner
2 Call, Jensen & Ferrell, P.C.
3 610 Newport Center Dr., Suite 700
4 Newport Beach, CA 92660
5 counsel for defendants Dell Financial Services, LLC,
6 DFS Acceptance and DFS Production

7 I declare under penalty of perjury that the foregoing is true and
8 correct. Executed at San Francisco, California on this 5th day of May, 2009.

9
10 

11 Stephanie Schmitt
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIVED

MAY 8 2009

1 MICHAEL R. SIMMONDS (SBN 96238)
TOMIO B. NARITA (SBN 156576)
2 JEFFREY A. TOPOR (SBN 195545)
SIMMONDS & NARITA LLP
3 44 Montgomery Street, Suite 3010
San Francisco, CA 94104-4816
4 Telephone: (415) 283-1000
Facsimile: (415) 352-2625
5 msimmonds@snllp.com
tnarita@snllp.com
6 jtopor@snllp.com

7 Attorneys for Defendants
8 Collins Financial Services, Inc. and
Nelson & Kennard
9

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA
12

13 DAVID TOURGEMAN,

14 Plaintiff,

15 vs.

16 COLLINS FINANCIAL SERVICES,
17 INC., a corporation; NELSON &
KENNARD, a partnership, DELL
18 FINANCIAL SERVICES, L.P., a
limited partnership; DFS
19 ACCEPTANCE, a corporation, DFS
PRODUCTION, a corporation,
20 AMERICAN INVESTMENT BANK,
N.A., a corporation; and DOES 1
21 through 10, inclusive,

22 Defendants.
23

CASE NO. 08-CV-1392 JLS NLS

**DEFENDANT NELSON &
KENNARD'S RESPONSE TO
PLAINTIFF'S SPECIAL
INTERROGATORIES, SET ONE**

24 PROPOUNDING PARTY:

Plaintiff DAVID TOURGEMAN

25 RESPONDING PARTY:

Defendant NELSON & KENNARD

26 SET NO.:

ONE
27
28

1 Defendant Nelson & Kennard ("Defendant") hereby objects and responds to
2 plaintiff David Tourgeman's ("Plaintiff") Special Interrogatories, Set One as follows:

3
4 **PRELIMINARY STATEMENT**

5 Defendant has not completed its investigation and discovery in this action.
6 The responses are based only upon Defendant's knowledge as of the date of these
7 responses, and are given without prejudice to Defendant's right to produce
8 subsequently discovered information or documents.

9
10 **GENERAL OBJECTIONS**

11 The following general objections are expressly incorporated into each of the
12 specific responses set forth below:

13 A. Defendant objects to producing any information or documents which
14 constitute, reflect, or contain communications with counsel on the grounds that such
15 communications are protected from discovery by virtue of the attorney-client
16 privilege and/or the joint defense privilege. Defendant further objects to each
17 interrogatory to the extent that it calls for information or documents which reflect or
18 contain attorney work product on the grounds that such information or documents are
19 protected from discovery by virtue of the attorney work product doctrine.

20 B. Defendant objects to each interrogatory to the extent that it is overbroad
21 and subjects Defendant to unreasonable and undue annoyance, oppression, burden,
22 and expense, and seeks information which is not relevant to the subject matter of this
23 lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

24 C. Defendant objects to each interrogatory to the extent that it seeks materials
25 or information which are not in the possession, custody or control of Defendant,
26 and/or which are equally or more readily available to Plaintiff.

27 D. Defendant objects to each interrogatory to the extent that it is
28 unreasonably cumulative and duplicative of other discovery in this action.

1 E. Defendant objects to each and every interrogatory to the extent that it
 2 seeks proprietary information, trade secrets, or information subject to protective
 3 orders, confidentiality agreements, rights of privacy or statutory provisions that bar
 4 the disclosure of that information without the consent of third parties.

5 F. Defendant objects to Plaintiff's "Instructions" and each and every
 6 interrogatory to the extent that they seek to impose burdens upon Defendant in excess
 7 of what is required under the Federal Rules of Civil Procedure.

8 G. Defendant objects to Plaintiff's definitions of the defined terms
 9 "NELSON," "YOU" and "YOUR" as overbroad, vague and ambiguous. Unless
 10 otherwise stated, these responses are made solely on behalf of Nelson & Kennard.

11 12 **RESPONSES TO INTERROGATORIES**

13 14 **INTERROGATORY NO. 1:**

15 Please identify the number of persons and entities in the United States who you
 16 contacted for the purposes of debt collection from July 31, 2007 to the present.
 17 [Definitions omitted].

18 **RESPONSE TO INTERROGATORY NO. 1:**

19 Defendant objects to this Interrogatory on the grounds that it is overbroad,
 20 unduly burdensome and oppressive, and seeks information which is not relevant to
 21 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
 22 admissible evidence. By propounding this Interrogatory, Plaintiff is simply
 23 attempting to impose undue burden and expense on Defendant. Further, Defendant
 24 does not concede that Plaintiff may pursue this action as a purported class action nor
 25 does Defendant concede that, even if class treatment were appropriate, that a class
 26 action is proper here, or that Plaintiff is a proper class representative with standing to
 27 pursue claims on behalf of a purported class. In addition, the case is not at issue as
 28

1 the Defendant has filed a motion to dismiss and a motion to strike the First Amended
2 Complaint. At best, the Interrogatory is premature.

3
4 **INTERROGATORY NO. 2:**

5 Please identify the number of persons and entities in the United States who you
6 sued for the purposes of debt collection from July 31, 2006 to the present.

7 **RESPONSE TO INTERROGATORY NO. 2:**

8 Defendant objects to this Interrogatory on the grounds that it is overbroad,
9 unduly burdensome and oppressive, and seeks information which is not relevant to
10 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
11 admissible evidence. By propounding this Interrogatory, Plaintiff is simply
12 attempting to impose undue burden and expense on Defendant. Further, Defendant
13 does not concede that Plaintiff may pursue this action as a purported class action nor
14 does Defendant concede that, even if class treatment were appropriate, that a class
15 action is proper here, or that Plaintiff is a proper class representative with standing to
16 pursue claims on behalf of a purported class. In addition, the case is not at issue as
17 the Defendant has filed a motion to dismiss and a motion to strike the First Amended
18 Complaint. At best, the Interrogatory is premature.

19
20 **INTERROGATORY NO. 3:**

21 Please state the name(s), business address(es), and job title(s) or capacity(ies)
22 of the officer(s), employee(s), or agent(s) answering or providing any information
23 used to answer each Interrogatory.

24 **RESPONSE TO INTERROGATORY NO. 3:**

25 Subject to and without waiving the General Objections, Defendant responds as
26 follows:

27 //

28 //

1 Robert Scott Kennard, partner
2 Nelson & Kennard
2180 Harvard St., Suite 160
3 Sacramento, CA 95815

4 Mr. Kennard may be contacted exclusively through counsel for Defendant.

5 **INTERROGATORY NO. 4:**

6 Please state the form of NELSON's organization and the date and place the
7 organization was organized and registered and/or licensed to do business.

8 **RESPONSE TO INTERROGATORY NO. 4:**

9 Defendant objects to this Interrogatory on the grounds that it seeks information
10 which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to
11 lead to the discovery of admissible evidence. Subject to and without waiving the
12 forgoing objection or the General Objections, Defendant responds as follows:

13 Nelson & Kennard is a California partnership. It is licensed to do business
14 where necessary.

15
16 **INTERROGATORY NO. 5:**

17 Please describe NELSON's procedures and policies for receiving debt related
18 information from NELSON's client.

19 **RESPONSE TO INTERROGATORY NO. 5:**

20 Defendant objects to this Interrogatory on the grounds that it is vague and
21 ambiguous as to the terms "receiving debt related information" and "NELSON's
22 client." Nelson & Kennard has a number of different clients and it employs various
23 methods with respect to each of those clients. Defendant also objects to this
24 Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive,
25 and to the extent that it seeks information which is not relevant to the subject matter
26 of this lawsuit, nor reasonably calculated to lead to the discovery of admissible
27 evidence. Defendant further objects to this Interrogatory to the extent that it seeks
28 proprietary information, trade secret information, information subject to protective

1 orders, confidentiality agreements, or statutory provisions that bar the disclosure of
2 that information without the consent of third parties and to the extent that it seeks
3 information subject to the attorney-client privilege or the attorney work product
4 doctrine.

5
6 **INTERROGATORY NO. 6:**

7 Please describe NELSON's procedures and policies for determining the
8 amount NELSON demands from alleged debtors, including but not limited to, the
9 method of calculating the principal owed, interest assessed and penalties applied.

10 **RESPONSE TO INTERROGATORY NO. 6:**

11 Defendant objects to this Interrogatory on the grounds that it is vague and
12 ambiguous as to the term "method of calculating principal owed, interest assessed
13 and penalties applied." Subject to and without waiving the forgoing objection or the
14 General Objections, Defendant responds as follows:

15 Nelson & Kennard does not conduct any independent calculations of the
16 principal amount due when it files suit to collect. The firm relies upon the
17 information supplied to it by its clients, as it is entitled to do by law.

18
19 **INTERROGATORY NO. 7:**

20 Please describe NELSON's procedures and policies for filing a lawsuit for
21 breach of contract on behalf of NELSON's client.

22 **RESPONSE TO INTERROGATORY NO. 7:**

23 Defendant objects to this Interrogatory on the grounds that it is vague and
24 ambiguous as to the terms "procedures and policies for filing a lawsuit" and
25 "NELSON's client." Nelson & Kennard has a number of clients and it employs
26 various methods on behalf of those clients. Defendant also objects to this
27 Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive,
28 and to the extent that it seeks information which is not relevant to the subject matter

1 of this lawsuit, nor reasonably calculated to lead to the discovery of admissible
2 evidence. Defendant further objects to this Interrogatory to the extent that it seeks
3 proprietary information, trade secret information, information subject to protective
4 orders, confidentiality agreements, or statutory provisions that bar the disclosure of
5 that information without the consent of third parties and to the extent that it seeks
6 information subject to the attorney-client privilege or the attorney work product
7 doctrine.

8
9 **INTERROGATORY NO. 8:**

10 Please describe NELSON's procedures and NELSON's client on "Rule 3.740
11 collections" grounds.

12 **RESPONSE TO INTERROGATORY NO. 8:**

13 Defendant objects to this Interrogatory on the grounds that it is so vague and
14 ambiguous as to be unanswerable. The terms "Rule 3.740 collections grounds" and
15 "NELSON's client" are vague and ambiguous. Nelson & Kennard has a number of
16 clients and it employs various methods on behalf of those clients. Defendant also
17 objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome
18 and oppressive, and to the extent that it seeks information which is not relevant to the
19 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
20 admissible evidence. Defendant further objects to this Interrogatory to the extent that
21 it seeks proprietary information, trade secret information, information subject to
22 protective orders, confidentiality agreements, or statutory provisions that bar the
23 disclosure of that information without the consent of third parties and to the extent
24 that it seeks information subject to the attorney-client privilege or the attorney work
25 product doctrine.

26 //

27 //

28 //

1 **INTERROGATORY NO. 9:**

2 Please describe NELSON's procedures and policies for determining the debt
3 amount NELSON demands from alleged debtors, including but not limited to, the
4 manner of calculation of principal debt, interest and penalties.

5 **RESPONSE TO INTERROGATORY NO. 9:**

6 Defendant objects to this Interrogatory to the extent that it is duplicative of
7 Interrogatory No. 6. This Interrogatory is vague and ambiguous as to the term
8 "manner of calculation of principal debt, interest and penalties." Subject to and
9 without waiving the forgoing objections or the General Objections, Defendant
10 responds as follows:

11 Nelson & Kennard does not conduct any independent calculations of the
12 principal amount due when it files suit to collect. The firm relies upon the
13 information supplied to it by its clients, as it is entitled to do by law.

14
15 **INTERROGATORY NO. 10:**

16 Please describe NELSON's procedures and policies for settling outstanding
17 alleged debts from alleged debtors.

18 **RESPONSE TO INTERROGATORY NO. 10:**

19 Defendant objects to this Interrogatory on the grounds that it is vague and
20 ambiguous as to the term "procedures and policies for settling." Nelson & Kennard
21 has a number of clients and it utilizes different approaches to settlement based upon
22 the client and the circumstances. Defendant also objects to this Interrogatory on the
23 grounds that it is overbroad, unduly burdensome and oppressive, and to the extent
24 that it seeks information which is not relevant to the subject matter of this lawsuit,
25 nor reasonably calculated to lead to the discovery of admissible evidence. Defendant
26 further objects to this Interrogatory to the extent that it seeks proprietary information,
27 trade secret information, information subject to protective orders, confidentiality
28 agreements, or statutory provisions that bar the disclosure of that information without

1 the consent of third parties and to the extent that it seeks information subject to the
2 attorney-client privilege or the attorney work product doctrine.

3
4 **INTERROGATORY NO. 11:**

5 Please identify all creditors that retained NELSON - from July 31, 2006 to the
6 present - for the purpose of collecting debts.

7 **RESPONSE TO INTERROGATORY NO. 11:**

8 Defendant objects to this Interrogatory on the grounds that it is overbroad,
9 unduly burdensome and oppressive, and to the extent that it seeks information which
10 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead
11 to the discovery of admissible evidence. There is no basis for identifying other
12 creditors that did not extend credit to Plaintiff and that have no relationship to this
13 case. Defendant further objects to this Interrogatory to the extent that it seeks
14 proprietary information, trade secret information, information subject to protective
15 orders, confidentiality agreements, or statutory provisions that bar the disclosure of
16 that information without the consent of third parties and to the extent that it seeks
17 information subject to the attorney-client privilege or the attorney work product
18 doctrine.

19
20 **INTERROGATORY NO. 12:**

21 Please identify all lawsuits for breach of contract, Rule 3.740 collections cases,
22 violations of the FDCPA and violations of the Rosenthal Act -by caption, court, civil
23 action number, and result - that NELSON is or has been a party to since July 31, 2006
24 that contain allegations of breach of contract or "Rule 3.740 collections."

25 **RESPONSE TO INTERROGATORY NO. 12:**

26 Subject to and without waiving the General Objections, Defendant responds as
27 follows:

1 The firm of Nelson & Kennard files lawsuits against consumers on behalf of
2 various creditors. It is not a party to those suits. There are no responsive suits to
3 identify.

4
5 **INTERROGATORY NO. 13:**

6 Did NELSON make any substantive change in company policy from July 31,
7 2006 to the present? If so, please identify and describe any substantive changes
8 NELSON made – from July 31, 2006 to the present – to any NELSON policy or
9 procedure in an effort to comply with the provision of the Federal [sic] Debt
10 Collection Practices Act.

11 **RESPONSE TO INTERROGATORY NO. 13:**

12 Defendant objects to this Interrogatory on the grounds that it is vague and
13 ambiguous regarding the term “substantive change in company policy.” The firm of
14 Nelson & Kennard complies with the FDCPA and engages in ongoing efforts to
15 ensure compliance. Subject to and without waiving the forgoing objections or the
16 General Objections, Defendant responds as follows: Defendant exercises its option to
17 produce records in response to this Interrogatory pursuant to Rule 33(d) of the
18 Federal Rules of Civil Procedure.

19
20 **INTERROGATORY NO. 14:**

21 Please describe the compensation agreements between NELSON and any
22 creditor that uses NELSON to file complaints against alleged debtors for breach of
23 contract and Rule 3.740 collections.

24 **RESPONSE TO INTERROGATORY NO. 14:**

25 Defendant objects to this Interrogatory on the grounds that it is overbroad,
26 unduly burdensome and oppressive, and to the extent that it seeks information which
27 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead
28 to the discovery of admissible evidence. The compensation arrangements between

1 Nelson & Kennard and its clients have nothing to do with the allegations of this case.
2 There is no legitimate basis for requesting this information, other than to harass and
3 annoy Defendant. Defendant further objects to this Interrogatory to the extent that it
4 seeks proprietary information, trade secret information, information subject to
5 protective orders, confidentiality agreements, or statutory provisions that bar the
6 disclosure of that information without the consent of third parties and to the extent
7 that it seeks information subject to the attorney-client privilege or the attorney work
8 product doctrine.

9
10 **INTERROGATORY NO. 15:**

11 Please identify the documents NELSON relied upon to confirm the amount of
12 David Tourgeman's debt.

13 **RESPONSE TO INTERROGATORY NO. 15:**

14 Subject to and without waiving the General Objections, pursuant to Federal
15 Rule of Civil Procedure 33(d), Defendant will produce non-privileged, responsive
16 documents in its possession, custody or control.

17
18 **INTERROGATORY NO. 16:**

19 Please identify the number of demand letters NELSON sent to alleged debtors
20 from July 2006 to the present.

21 **RESPONSE TO INTERROGATORY NO. 16:**

22 Defendant also objects to this Interrogatory on the grounds that it is overbroad,
23 unduly burdensome and oppressive, and to the extent that it seeks information which
24 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead
25 to the discovery of admissible evidence. This case does not challenge the contents of
26 any demand letter sent by Nelson & Kennard. Further, Defendant does not concede
27 that Plaintiff may pursue this action as a purported class action nor does Defendant
28 concede that, even if class treatment were appropriate, that a class action is proper

1 here, or that Plaintiff is a proper class representative with standing to pursue claims
2 on behalf of a purported class. At best, the Interrogatory is premature.

3
4 **INTERROGATORY NO. 17:**

5 Please describe the work done by Jonathan Ayers to verify the information
6 contained in the complaint filed in Case No. 37-2007-00072265-CL-CL-CTL,
7 entitled *Collins v. Tourgeman*.

8 **RESPONSE TO INTERROGATORY NO. 17:**

9 Subject to and without waiving the General Objections, Defendant responds as
10 follows:

11 Consistent with his general practice, upon receiving a draft of the complaint
12 filed in the action *Collins Financial Services, Inc. v. David Tourgeman*, case number
13 37-2007-00072265-CL-CL-CTL prepared by staff of Nelson & Kennard, Mr. Ayers
14 reviewed it to ensure that the information contained therein, i.e. Plaintiff's name, the
15 name of the original creditor, the date of the contract sued upon, the date of the
16 account's charge-off, the amount at issue and type of debt (revolving line of credit or
17 loan, for example) conformed to the same information that was provided by his client.
18 Mr. Ayers also ensured that the exemplar terms and conditions attached as an exhibit
19 to the complaint were those that were provided to Nelson & Kennard in connection
20 with Plaintiff's account.

21 Further, Mr. Ayers reviewed the notes made on Plaintiff's account to confirm
22 that a letter was sent to Plaintiff informing him that if the collection action were
23 commenced, Collins Financial Services, Inc. might recover its reasonable attorney's
24 fees and court costs as allowed by law in addition to the principal and interest owed
25 by Plaintiff. Mr. Ayers also reviewed the skiptracing work of his office staff by
26 reviewing the chain of information in the account, including the notes made regarding
27 letters sent and received (here, no letters were received from Plaintiff) and any notes
28 made regarding forwarding or returning of mail (here, no mail was returned) or

1 telephone contact (here, there was no telephone contact with Plaintiff) in order to
2 verify Plaintiff's county of residence. All such information reviewed indicated that
3 Plaintiff resided in San Diego County. Mr. Ayers also reviewed the billing and
4 delivery addresses reflected in the account media that was provided by his client
5 which supported the conclusion that Plaintiff resided in San Diego County. Mr.
6 Ayers reviewed the same media in order to confirm that the date of last payment
7 received by the original creditor was August 11, 2003 to confirm that the suit was "in
8 statute" at the time it was filed.

9
10 **INTERROGATORY NO. 18:**

11 Please describe the process NELSON uses to skip trace debtors in the event of
12 a debtor's address or phone number change.

13 **RESPONSE TO INTERROGATORY NO. 18:**

14 Defendant objects to this Interrogatory on the grounds that it is vague and
15 ambiguous.

16 Subject to and without waiving the forgoing objections or the General
17 Objections, Defendant responds as follows: Nelson & Kennard does not skip trace
18 debtors if the debtor's address or phone number change. The firm simply enters the
19 new address or phone number into its account records.

20 **INTERROGATORY NO. 19:**

21 Please describe the position at NELSON that prepares the affidavit authorizing
22 legal action against an alleged debtor, including but not limited to the position's
23 duties, responsibilities, job requirements, and the number of people who perform this
24 task for NELSON.

25 **RESPONSE TO INTERROGATORY NO. 19:**

26 Defendant objects to this Interrogatory on the grounds that it is vague and
27 ambiguous generally and as to the phrase "the position at NELSON that prepares the
28 affidavit authorizing legal action."

1 Subject to and without waiving the forgoing objections or the General
2 Objections, Defendant responds as follows: there is no such affidavit or position at
3 Nelson & Kennard as described in this interrogatory.
4

5 **INTERROGATORY NO. 20:**

6 If NELSON's response to Plaintiff David Tourgeman's Requests for
7 Admission (Set One) Request 3 served concurrently with Plaintiff David
8 Tourgeman's Special Interrogatories is anything other than an unqualified admission,
9 please explain the basis for NELSON's denial.

10 **RESPONSE TO INTERROGATORY NO. 20:**

11 Defendant incorporates by reference its objections and response to Request for
12 Admission No. 3. The request is so vague and ambiguous it is virtually unintelligible.
13 As Defendant understands it, the request seeks Defendant's admission that numerous
14 unspecified debtors are effected in some unspecified way by unspecified "actions" of
15 the Defendant. Defendant denies that it has acted in an unlawful manner and denies
16 that it has engaged in any improper "actions" with respect to consumers. Further, to
17 the extent that Plaintiff is seeking discovery with respect to a proposed class,
18 Defendant does not concede that Plaintiff may pursue this action as a purported class
19 action. Nor does Defendant concede that, even if class treatment were appropriate,
20 that a class action is proper here, or that Plaintiff is a proper class representative with
21 standing to pursue claims on behalf of a purported class.
22

23 **INTERROGATORY NO. 21:**

24 If NELSON's response to Plaintiff David Tourgeman's Requests for
25 Admission (Set One) Request 12 served concurrently with Plaintiff David
26 Tourgeman's Special Interrogatories is anything other than an unqualified admission,
27 please explain the basis for NELSON's denial.
28

1 **RESPONSE TO INTERROGATORY NO. 21:**

2 Defendant incorporates by reference its objections and response to Request for
3 Admission No. 12. Subject to and without waiving the forgoing objections or the
4 General Objections, Defendant responds as follows:

5 Defendant verifies the contact information of each debtor before filing suit
6 against the debtor.

7
8 DATED: May 5, 2009

SIMMONDS & NARITA LLP
MICHAEL R. SIMMONDS
TOMIO B. NARITA



11 By: _____

12 Tomio B. Narita
13 Attorneys for Defendants
14 Collins Financial Services, Inc. and
Nelson & Kennard

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

VERIFICATION

I, Robert Scott Kennard, state that am authorized to make this verification on behalf of defendant Nelson & Kennard. I have read the foregoing **DEFENDANT NELSON & KENNARD'S RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE**, and I know the contents thereof. To the extent that I have personal knowledge of the facts contained therein, the same are true and correct. Insofar as the facts are based upon a composite of information of many individuals, I do not have personal knowledge concerning all of the information contained in the responses, but I am informed and believe that the matters stated in said responses for which I do not have personal knowledge are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 5, 2009 at Sacramento, California.


Robert Scott Kennard

PROOF OF SERVICE

I, the undersigned, declare:

I am employed in the City and County of San Francisco, California. I am over the age of eighteen years and not a party to this action. My business address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-4816.

I am readily familiar with the business practices of my employer, Simmonds & Narita LLP, for the processing of correspondence by mailing with the United States Postal Service and that said correspondence is deposited with the United States Postal Service that same day in the ordinary course of business.

On this date, I served a copy of the following document:

1) **DEFENDANT NELSON & KENNARD'S RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE**

by causing such document to be mailed to the address indicated below:

VIA U.S. MAIL

Daniel P. Murphy
4691 Torrey Circle A306
San Diego, CA 92130
counsel for Plaintiff

Francis A. Bottini
Frank J. Johnson
Derek J. Wilson
Johnson Bottini, LLP
655 West Broadway, Suite 1400
San Diego, CA 92101
counsel for Plaintiff

//

//

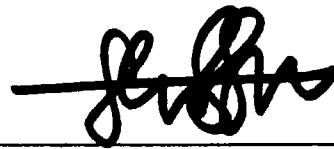
//

//

//

1 Scott J. Ferrell and Lisa A. Wegner
2 Call, Jensen & Ferrell, P.C.
3 610 Newport Center Dr., Suite 700
4 Newport Beach, CA 92660
5 counsel for defendants Dell Financial Services, LLC,
6 DFS Acceptance and DFS Production
7

8 I declare under penalty of perjury that the foregoing is true and
9 correct. Executed at San Francisco, California on this 5th day of May, 2009.
10

11 

12 Stephanie Schmitt
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1 **NOTICE IS HEREBY GIVEN**, in accordance with the Court's January 12, 2010 Case
2 Management Conference Order, that plaintiffs Gary Cinotto and Steamfitters Local 449 Pension
3 Fund ("Plaintiffs") may call the following persons as percipient witnesses at trial in this matter:

- 4 • Joshua H. Levine (Mentor employee)
- 5 • James Gilmour (Mentor employee)
- 6 • Noam Krantz (Mentor employee)
- 7 • Anna Marie Daniels (Mentor employee)
- 8 • Brian Luedtke (Mentor employee)
- 9 • Nicola Selley (Mentor employee)
- 10 • Julie Meyers (Mentor employee)
- 11 • Joseph Newcomb (Mentor general counsel)
- 12 • Ed Northup (Mentor employee)
- 13 • Vicky Johnson (Mentor employee)
- 14 • Sharon Rice (Mentor employee)
- 15 • Udo Graf (Mentor employee)
- 16 • Michael L. Emmons (Mentor Director and Defendant)
- 17 • Walter W. Faster (Mentor Director and Defendant)
- 18 • Margaret H. Jordan (Mentor Director and Defendant)
- 19 • Katherine S. Napier (Mentor Director and Defendant)
- 20 • Burt E. Rosen (Mentor Director and Defendant)
- 21 • Joseph W. Whitters (Mentor Director and Defendant)
- 22 • Vikram Bhardwaj (Citicorp employee)
- 23 • Benjamin Carpenter (Citicorp employee)
- 24 • Wesley C. Walraven (Citicorp employee)
- 25 • Jim Wu (Citi employee)
- 26 • Aaron Pine (Citi employee)
- 27 • Shauna Parikh (Citi employee)
- 28 • Michael O'Neil (former Mentor employee)

- 1 • Steamfitters Local 449 Pension Fund (Plaintiff)
- 2 • Police and Fire Retirement System of the City of Detroit (Plaintiff)
- 3 • Gary Cinotto (Plaintiff)
- 4 • Person(s) identified as Person Most Knowledgeable in response to and/or in connection with
- 5 Plaintiffs' Subpoena to Johnson & Johnson dated December 29, 2009.
- 6 • Alex Gorsky (Johnson & Johnson executive)
- 7 • Gary Pruden (Worldwide President, Ethicon)
- 8 • William C. Weldon (Chairman & CEO, Johnson & Johnson)
- 9 • Sherilyn McCoy (Worldwide Chairman, Surgical Care Group, Johnson & Johnson)
- 10 • Scott Stanton (Attorney, Morrison & Foerster)
- 11 • Manan Shah (Attorney, Jones Day)
- 12 • Anjan Aralihalli (employee of Sanofi-Aventis)
- 13 • Jeffrey Buckalew (employee of Greenhill & Co.)
- 14 • Michael Giaquinto (employee of Greenhill & Co.)
- 15 • Capital Research Global Investors (Mentor shareholder)
- 16 • Capital World Investors (Mentor shareholder)

17
18
19
20
21
22
23
24
25
26 //

27 //
28

1 The above list is without prejudice. Plaintiffs reserve their right to supplement this list and
2 to call any additional witness(es) based on further information obtained through ongoing
3 discovery. Plaintiffs also reserve their right to call any parties and any additional witness(es)
4 identified by any other party to this action, and/or call any additional impeachment and/or rebuttal
5 witnesses.

6
7 DATED: January 21, 2010

JOHNSON BOTTINI, LLP
FRANK J. JOHNSON (174882)
FRANCIS A. BOTTINI, JR. (175783)
BRETT M. WEAVER (204715)

8
9
10
11 By: _____

FRANCIS A. BOTTINI, JR.
501 W. Broadway, Suite 1720
San Diego, CA 92101
Telephone: (619) 230-0063
Facsimile: (619) 238-0622

15 COUGHLIN STOIA GELLER
16 RUDMAN & ROBBINS LLP
17 RANDALL J. BARON (150796)
18 A. RICK ATWOOD, JR. (156529)
19 DAVID T. WISSBROECKER (243867)
655 West Broadway, Suite 1900
San Diego, CA 92101
Telephone: (619) 231-1058
Facsimile: (619) 231-7423

20 *Co-Lead Counsel for Plaintiffs*
21
22
23
24
25
26
27
28

RECEIVED

MAY 8 2009

1 MICHAEL R. SIMMONDS (SBN 96238)
 2 TOMIO B. NARITA (SBN 156576)
 3 JEFFREY A. TOPOR (SBN 195545)
 4 SIMMONDS & NARITA LLP
 5 44 Montgomery Street, Suite 3010
 6 San Francisco, CA 94104-4816
 7 Telephone: (415) 283-1000
 8 Facsimile: (415) 352-2625
 9 msimmonds@snllp.com
 10 tnarita@snllp.com
 11 jtopor@snllp.com

12 Attorneys for Defendants
 13 Collins Financial Services, Inc. and
 14 Nelson & Kennard

15 UNITED STATES DISTRICT COURT
 16 SOUTHERN DISTRICT OF CALIFORNIA

17 DAVID TOURGEMAN,

18 Plaintiff,

19 vs.

20 COLLINS FINANCIAL SERVICES,
 21 INC., a corporation; NELSON &
 22 KENNARD, a partnership, DELL
 23 FINANCIAL SERVICES, L.P., a
 24 limited partnership; DFS
 25 ACCEPTANCE, a corporation, DFS
 26 PRODUCTION, a corporation,
 27 AMERICAN INVESTMENT BANK,
 28 N.A., a corporation; and DOES 1
 through 10, inclusive,

Defendants.

CASE NO. 08-CV-1392 JLS NLS

**DEFENDANT COLLINS FINANCIAL
 SERVICES, INC. RESPONSE TO
 PLAINTIFF'S REQUESTS FOR
 PRODUCTION, SET ONE**

PROPOUNDING PARTY:

Plaintiff DAVID TOURGEMAN

RESPONDING PARTY:

Defendant COLLINS FINANCIAL
 SERVICES, INC.

SET NO.:

ONE

1 Defendant Collins Financial Services, Inc. ("Defendant") hereby objects and
2 responds to plaintiff David Tourgeman's ("Plaintiff") Requests for Production of
3 Documents, Set One as follows:

4
5 **PRELIMINARY STATEMENT**

6 Defendant has not completed its investigation and discovery in this action.
7 The responses are based only upon Defendant's knowledge as of the date of these
8 responses, and are given without prejudice to Defendant's right to produce
9 subsequently discovered information or documents.

10
11 **GENERAL OBJECTIONS**

12 The General Objections asserted below shall be deemed to be applicable to
13 each of Plaintiff's Requests, and are incorporated into each and every specific
14 response to each Request set forth. Such General Objections are not waived, nor in
15 any way limited by any further objection to any specific Request.

16 A. Defendant objects to each Request to the extent that it is overbroad and
17 subjects Defendant to unreasonable and undue annoyance, oppression, burden and
18 expense and seeks information which is not relevant to the subject matter of this
19 lawsuit nor reasonably calculated to lead to the discovery of admissible evidence.

20 B. Defendant objects to each Request to the extent that it seeks materials
21 which are not in the possession, custody or control of Defendant and/or which are
22 equally or more readily available to Plaintiff.

23 C. To the extent that any Request, Definition or Instruction may be construed
24 as requiring Defendant to characterize documents or their contents or to speculate as
25 to what documents may or may not show, Defendant objects to such Request as
26 vague, ambiguous and calling for legal conclusions and speculation.

27 D. Defendant objects to each Request to the extent it seeks information which
28 constitutes, reflects, or contains communications between counsel and Defendant on

1 the grounds that such communications are protected from discovery by virtue of the
2 attorney-client privilege, the joint defense privilege, or any other recognized privilege
3 or immunity. Defendant further objects to each Request to the extent it calls for
4 information that may reflect or contain attorney work product, on the grounds that
5 such information is protected from discovery by virtue of the attorney work product
6 doctrine.

7 E. Defendant objects to each and every Request to the extent that it seeks
8 proprietary information, trade secrets, or information subject to protective orders,
9 confidentiality agreements, or statutory provisions that bar the disclosure of that
10 information without the consent of third parties.

11 F. In responding to Plaintiff's Requests, to the extent not otherwise objected
12 to, Defendant has used reasonable diligence to locate responsive documents and
13 things. To the extent Plaintiff seeks to require Defendant to do more than that,
14 Defendant objects to each Request, on the grounds it is overly broad, oppressive and
15 unduly burdensome.

16 G. Defendant objects to each and every Request to the extent such Requests
17 seek to impose obligations beyond those permitted under the Rules of Civil
18 Procedure.

19 H. Defendant objects to each and every Request to the extent such Requests
20 call for production of pleadings or other materials already produced in this case.

21 I. Defendant objects to Plaintiff's definitions of the defined terms
22 "COLLINS," "YOU" and "YOUR" as overbroad, vague and ambiguous, and to the
23 extent that by using such terms as defined by Plaintiff, Plaintiff seeks documents not
24 in the possession, custody or control of Defendant.

25 //

26 //

27 //

28 //

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS**DOCUMENT REQUEST NO. 1:**

Please produce ALL COMMUNICATIONS between COLLINS and NELSON that RELATE TO Plaintiff David Tourgeman and the collection of his alleged debt. To the extent that these communications need to be redacted for privilege, please provide Plaintiff with a privilege log as described above.

RESPONSE TO DOCUMENT REQUEST NO. 1:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties and to the extent that it seeks information subject to the attorney-client privilege or the attorney work product doctrine.

Subject to and without waiving the forgoing objections or the General Objections, Defendant will produce all non-privileged documents in its possession, custody or control that relate to the Plaintiff, his account or the defenses asserted in this action.

DOCUMENT REQUEST NO. 2:

Please produce ALL training materials that RELATE TO debt collection YOU provide to COLLINS employees.

RESPONSE TO DOCUMENT REQUEST NO. 2:

Subject to and without waiving the foregoing objections or the General Objections, Defendant responds as follows:

1 Defendant is not a "debt collector" as defined by the FDCPA and it does not
2 itself engage in the collection of debts. It does not have employees that engage in
3 debt collection, and therefore does not train on collection and does not have
4 responsive documents.

5
6 **DOCUMENT REQUEST NO. 3:**

7 Please produce ALL DOCUMENTS CONCERNING the duties and
8 responsibilities of COLLINS employees who receive, maintain, and send data
9 regarding alleged debts.

10 **RESPONSE TO DOCUMENT REQUEST NO. 3:**

11 Defendant objects to this Request on the grounds that it is vague and
12 ambiguous as phrased. Defendant also objects to this Request on the grounds that, as
13 Defendant understands it, the Request is overbroad, unduly burdensome and
14 oppressive, and to the extent that it seeks information which is not relevant to the
15 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
16 admissible evidence. By asking Defendant to produce "ALL DOCUMENTS
17 CONCERNING the duties and responsibilities of COLLINS employees who receive,
18 maintain, and send data regarding alleged debts," Plaintiff is potentially asking
19 Defendant to produce an enormous amount of documentation which will have no
20 bearing on this dispute. Defendant further objects to this Request to the extent that it
21 seeks proprietary information, trade secret information, information subject to
22 protective orders, confidentiality agreements, or statutory provisions that bar the
23 disclosure of that information without the consent of third parties and to the extent
24 that it seeks information subject to the attorney-client privilege or the attorney work
25 product doctrine.

26 Subject to and without waiving the forgoing objections or the General
27 Objections, Defendant responds that it is willing to meet and confer with Plaintiff in
28

1 order to understand the Request and to identify the scope of any potential production
2 of documents.

3
4 **DOCUMENT REQUEST NO. 4:**

5 Please produce ALL DOCUMENTS that RELATE TO YOUR policies and
6 guidelines for investigating alleged debts.

7 **RESPONSE TO DOCUMENT REQUEST NO. 4:**

8 Defendant objects to this Request on the grounds that it is vague and
9 ambiguous as to the phrase "investigating alleged debts." Defendant also objects to
10 this Request on the grounds that, based on Defendant's understanding of its meaning,
11 the Request is overbroad, unduly burdensome and oppressive, and to the extent that it
12 seeks information which is not relevant to the subject matter of this lawsuit, nor
13 reasonably calculated to lead to the discovery of admissible evidence. By asking
14 Defendant to produce "ALL DOCUMENTS that RELATE TO YOUR policies and
15 guidelines for investigating alleged debts," Plaintiff is potentially asking Defendant to
16 produce an enormous amount of documentation which will have no bearing on this
17 dispute. Defendant further objects to this Request to the extent that it seeks
18 proprietary information, trade secret information, information subject to protective
19 orders, confidentiality agreements, or statutory provisions that bar the disclosure of
20 that information without the consent of third parties and to the extent that it seeks
21 information subject to the attorney-client privilege or the attorney work product
22 doctrine.

23 Subject to and without waiving the forgoing objections or the General
24 Objections, Defendant responds that it is willing to meet and confer with Plaintiff in
25 order to understand the Request and to identify the scope of any potential production
26 of documents.

DOCUMENT REQUEST NO. 5:

Please produce ALL DOCUMENTS that RELATE TO YOUR policies and guidelines for filing a lawsuit against an alleged debtor.

RESPONSE TO DOCUMENT REQUEST NO. 5:

Subject to and without waiving the General Objections, Defendant does not file lawsuits. Law firms are retained to file suit on its behalf. Defendant does not maintain documents reflecting guidelines or policies for filing lawsuits.

DOCUMENT REQUEST NO. 6:

Please produce ALL DOCUMENTS that RELATE TO YOUR 1692g notices, including but not limited to every sample collection letter YOU send to alleged debtors.

RESPONSE TO DOCUMENT REQUEST NO. 6:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins does not communicate with debtors regarding debts and therefore does not send notices to debtors pursuant to section 1692g of the FDCPA.

DOCUMENT REQUEST NO. 7:

Please produce ALL form letters, enclosures, envelopes, complaints, memoranda, etc. used by COLLINS in YOUR debt collection activity.

RESPONSE TO DOCUMENT REQUEST NO. 7:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins does not communicate with debtors regarding debts and therefore has no responsive documents.

DOCUMENT REQUEST NO. 8:

Please produce ALL DOCUMENTS YOU relied upon to verify Plaintiff David Tourgeman's alleged debt.

RESPONSE TO DOCUMENT REQUEST NO. 8:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "verify." Subject to and without waiving the forgoing objections or the General Objections, Defendant will produce non-privileged documents in its possession, custody or control that relate to Plaintiff, his account and the defenses asserted in this action.

DOCUMENT REQUEST NO. 9:

Please produce ALL DOCUMENTS that RELATE TO COLLINS' collection practices and procedures.

RESPONSE TO DOCUMENT REQUEST NO. 9:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins is not a debt collector and it does not engage in the collection of debts. It has no collection practices or procedures and therefore has no documents to produce.

DOCUMENT REQUEST NO. 10:

Please produce ALL DOCUMENTS that RELATE TO financial arrangements between YOU and NELSON.

RESPONSE TO DOCUMENT REQUEST NO. 10:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "financial arrangements." Subject to and without waiving the forgoing objection or the General Objections, Defendant responds as follows: Collins does not have a financial arrangements with the firm.

//

//

//

DOCUMENT REQUEST NO. 11:

Please produce ALL DOCUMENTS that RELATE TO the financial arrangement between YOU and Dell Financial Services, Inc. - including any of its past or present agents, employees, representatives, attorneys, accountants, investigators, assigns, subsidiaries, or parent companies, predecessors-in-interest, successors-in-interest, affiliates, or anyone else acting on Dell Financial Services, Inc.'s behalf.

RESPONSE TO DOCUMENT REQUEST NO. 11:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "financial arrangements." Defendant also objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the disclosure of that information without the consent of third parties.

Subject to and without waiving the forgoing objections or the General Objections, Defendant responds that it is willing to meet and confer with Plaintiff in order to understand the Request and to identify the scope of any potential production of documents.

DOCUMENT REQUEST NO. 12:

Please produce ALL DOCUMENTS pertaining to the number of alleged debtors that YOU filed complaints against from July 31, 2007 to the present.

RESPONSE TO DOCUMENT REQUEST NO. 12:

Collins does not file complaints against debtors. Law firms are retained to file complaints against debtors. Thus Collins does not have any documents that are

1 responsive to this Request.

2
3 **DOCUMENT REQUEST NO. 13:**

4 Please produce ALL DOCUMENTS pertaining to the number of alleged
5 debtors that YOU mailed letters to requesting payment of an alleged debt from July
6 31, 2007 to the present.

7 **RESPONSE TO DOCUMENT REQUEST NO. 13:**

8 Collins does not mail letters to debtors. There are no responsive documents.

9
10 **DOCUMENT REQUEST NO. 14:**

11 Please produce ALL DOCUMENTS that RELATE TO YOUR investigation of
12 Plaintiff David Tourgeman's alleged debt.

13 **RESPONSE TO DOCUMENT REQUEST NO. 14:**

14 Defendant objects to this Request on the grounds that it is vague and
15 ambiguous as to the term "investigation." Subject to and without waiving the
16 forgoing objection or the General Objections, Defendant will produce non-privileged
17 documents in its possession, custody or control that relate to Plaintiff, his account or
18 any of the defenses asserted in this action.

19
20 **DOCUMENT REQUEST NO. 15:**

21 Please produce ALL DOCUMENTS RELATING TO YOUR organization of
22 COLLINS' employees, including any subsidiaries or affiliates.

23 **RESPONSE TO DOCUMENT REQUEST NO. 15:**

24 Defendant objects to this Request on the grounds that it seeks information
25 which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to
26 lead to the discovery of admissible evidence. Subject to and without waiving the
27 forgoing objection or the General Objections, Collins will produce organizational
28 charts, if any exist, responsive to this Request.

DOCUMENT REQUEST NO. 16:

Please produce ALL copies of each complaint in any litigation filed against COLLINS, if any, alleging violations of the Fair Debt Collection Practices Act and the Rosenthal Act.

RESPONSE TO DOCUMENT REQUEST NO. 16:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Complaints filed by other debtors containing unsubstantiated allegations regarding other sets of facts has no bearing on the claims or defenses in this action. Defendant also objects to this Request on the grounds that the documents requested, if any exist, are a matter of public record, equally available to Plaintiff.

DOCUMENT REQUEST NO. 17:

Please produce ALL DOCUMENTS that RELATE TO YOUR policy for the retention and destruction of records, DOCUMENTS, or files from July 31, 2007 to the present.

RESPONSE TO DOCUMENT REQUEST NO. 17:

Subject to and without waiving the General Objections, Defendant will produce non-privileged documents in its possession, custody or control, if any, that are responsive to this Request.

DOCUMENT REQUEST NO. 18:

Please produce ALL DOCUMENTS that RELATE TO the complaint YOU filed as a plaintiff in San Diego Superior Court on August 2, 2007. Case No. 37-2007-00072265-CL-CL-CTL ("*Collins v. Tourgeman*"), including, but not limited to, all documents YOU relied on in authorizing the complaint's filing.

1 **RESPONSE TO DOCUMENT REQUEST NO. 18:**

2 Collins did not file the lawsuit. The law firm of Nelson & Kennard was
3 retained to file suit. Subject to and without waiving the General Objections,
4 Defendant will produce non-privileged documents in its possession, custody or
5 control that are responsive to this Request.

6
7 **DOCUMENT REQUEST NO. 19:**

8 Please produce ALL DOCUMENTS relating to the maintenance or change of
9 procedures by COLLINS adopted to avoid any violation of the Fair Debt Collection
10 Practices Act and the Rosenthal Act.

11 **RESPONSE TO DOCUMENT REQUEST NO. 19:**

12 Subject to and without waiving the General Objections, Collins does not seek
13 to collect debts from consumers. It has no documents that are responsive to this
14 Request.

15
16 **DOCUMENT REQUEST NO. 20:**

17 Please produce ALL DOCUMENTS RELATING TO insurance policies
18 covering COLLINS for civil law violations including breach of contract, California's
19 Unfair Competition Laws, the Federal [sic] Debt Collection Practices Act and the
20 Rosenthal Act.

21 **RESPONSE TO DOCUMENT REQUEST NO. 20:**

22 Collins has not tendered the defense of this action to any insurance carrier and
23 thus has no responsive documents.

24
25 **DOCUMENT REQUEST NO. 21:**

26 Please produce ALL DOCUMENTS that RELATE TO an investigation of
27 COLLINS by an AGENCY for violations of California Unfair Competition Laws, the
28 Federal [sic] Debt Collection Practices Act and the Rosenthal Act.

RESPONSE TO DOCUMENT REQUEST NO. 21:

Defendant objects to this Request on the grounds that it is vague and ambiguous as to the term "an investigation." Defendant also objects to this Request on the grounds that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

DOCUMENT REQUEST NO. 22:

Please produce ALL DOCUMENTS that RELATE TO the retention agreements, including the retention agreements themselves (or other operative document describing the respective duties and obligations of client and attorney), if any, between COLLINS and NELSON.

RESPONSE TO DOCUMENT REQUEST NO. 22:

No responsive documents exist.

DOCUMENT REQUEST NO. 23:

Please produce ALL DOCUMENTS that RELATE TO COLLINS' phone calls, including but not limited to phone records and call logs, placed to David Tourgeman, Cesar Tourgeman, Rebecca Tourgeman or anyone else for the purposes of collecting David Tourgeman's alleged debt.

RESPONSE TO DOCUMENT REQUEST NO. 23:

No responsive documents exist.

DOCUMENT REQUEST NO. 24:

Please produce ALL DOCUMENTS that RELATE TO COLLINS' policies and procedures for settling alleged debts with debtors.

RESPONSE TO DOCUMENT REQUEST NO. 24:

No responsive documents exist.

DOCUMENT REQUEST NO. 25:

Please produce ALL DOCUMENTS that RELATE TO COLLINS' revenue for each calendar year from 2005 to the present, including but not limited to financial summaries, period reports, tax returns and financial statements.

RESPONSE TO DOCUMENT REQUEST NO. 25:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Request to the extent that it seeks confidential financial information.

DOCUMENT REQUEST NO. 26:

Please produce ALL DOCUMENTS that RELATE TO COLLINS' processes for transmitting account information of debtors to NELSON.

RESPONSE TO DOCUMENT REQUEST NO. 26:

Defendant objects on the grounds that the Request is vague and ambiguous. Subject to and without waiving the forgoing objection or the General Objections, Defendant responds that no responsive documents exist.

DOCUMENT REQUEST NO. 27:

Please produce ALL DOCUMENTS that RELATE TO the contractual relationship between YOU and Dell Financial Services, Inc. - including any of its past or present agents, employees, representatives, attorneys, accountants, investigators, assigns, subsidiaries, or parent companies, predecessors-in-interest, successors-in-interest, affiliates, or anyone else acting on Dell Financial Services, Inc.'s behalf.

RESPONSE TO DOCUMENT REQUEST NO. 27:

Defendant objects to this Request on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not

1 relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the
2 discovery of admissible evidence. Defendant also objects to this Request to the
3 extent that it seeks proprietary information, trade secret information, information
4 subject to protective orders, confidentiality agreements, or statutory provisions that
5 bar the disclosure of that information without the consent of third parties.

6 Subject to and without waiving the forgoing objections or the General
7 Objections, Defendant will produce non-privileged documents in its possession,
8 custody or control that relate to Plaintiff, his account or any of the defenses asserted
9 in this action.

10
11 **DOCUMENT REQUEST NO. 28:**

12 Please produce ALL DOCUMENTS that RELATE TO COLLINS' contracts
13 with skip-tracing services and other data providers YOU use to find current
14 information for any alleged debtor.

15 **RESPONSE TO DOCUMENT REQUEST NO. 28:**

16 No responsive documents exist.

17
18 DATED: May 5, 2009

SIMMONDS & NARITA LLP
MICHAEL R. SIMMONDS
TOMIO B. NARITA
JEFFREY A. TOPOR

19
20
21
22 By: 

23 Tomio B. Narita
24 Attorneys for Defendants
25 Collins Financial Services, Inc. and
26 Nelson & Kennard
27
28

1 PROOF OF SERVICE

2 I, the undersigned, declare:

3
4 I am employed in the City and County of San Francisco, California. I
5 am over the age of eighteen years and not a party to this action. My business
6 address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-
4816.

7 I am readily familiar with the business practices of my employer,
8 Simmonds & Narita LLP, for the processing of correspondence by mailing with
9 the United States Postal Service and that said correspondence is deposited with the
10 United States Postal Service that same day in the ordinary course of business.

11 On this date, I served a copy of the following document:

- 12 1) **DEFENDANT COLLINS FINANCIAL SERVICES, INC.**
13 **RESPONSE TO PLAINTIFF'S REQUESTS FOR**
14 **PRODUCTION, SET ONE**

15 by causing such document to be mailed to the address indicated below:

16 VIA U.S. MAIL

17
18 Daniel P. Murphy
19 4691 Torrey Circle A306
20 San Diego, CA 92130
counsel for Plaintiff

21 Francis A. Bottini
22 Frank J. Johnson
23 Derek J. Wilson
24 Johnson Bottini, LLP
25 655 West Broadway, Suite 1400
San Diego, CA 92101
counsel for Plaintiff

26 //

27 //

28 //

//

//

1 Scott J. Ferrell and Lisa A. Wegner
2 Call, Jensen & Ferrell, P.C.
3 610 Newport Center Dr., Suite 700
4 Newport Beach, CA 92660
5 counsel for defendants Dell Financial Services, LLC,
6 DFS Acceptance and DFS Production

7 I declare under penalty of perjury that the foregoing is true and
8 correct. Executed at San Francisco, California on this 5th day of May, 2009.

9
10 
11 _____
12 Stephanie Schmitt
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

RECEIVED

MAY 8 2009

1 MICHAEL R. SIMMONDS (SBN 96238)
2 TOMIO B. NARITA (SBN 156576)
3 JEFFREY A. TOPOR (SBN 195545)
4 SIMMONDS & NARITA LLP
5 44 Montgomery Street, Suite 3010
6 San Francisco, CA 94104-4816
7 Telephone: (415) 283-1000
8 Facsimile: (415) 352-2625
9 msimmonds@snllp.com
10 tnarita@snllp.com
11 jtopor@snllp.com

12 Attorneys for Defendants
13 Collins Financial Services, Inc. and
14 Nelson & Kennard
15

16 UNITED STATES DISTRICT COURT
17 SOUTHERN DISTRICT OF CALIFORNIA
18

19 DAVID TOURGEMAN,

20 Plaintiff,

21 vs.

22 COLLINS FINANCIAL SERVICES,
23 INC., a corporation; NELSON &
24 KENNARD, a partnership, DELL
25 FINANCIAL SERVICES, L.P., a
26 limited partnership; DFS
27 ACCEPTANCE, a corporation, DFS
28 PRODUCTION, a corporation,
AMERICAN INVESTMENT BANK,
N.A., a corporation; and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 08-CV-1392 JLS NLS

**DEFENDANT COLLINS FINANCIAL
SERVICES, INC. RESPONSE TO
PLAINTIFF'S SPECIAL
INTERROGATORIES, SET ONE**

PROPOUNDING PARTY:

Plaintiff DAVID TOURGEMAN

RESPONDING PARTY:

Defendant COLLINS FINANCIAL
SERVICES, INC.

SET NO.:

ONE

1 Defendant Collins Financial Services, Inc. ("Defendant") hereby objects and
2 responds to plaintiff David Tourgeman's ("Plaintiff") Special Interrogatories, Set One
3 as follows:

4
5 **PRELIMINARY STATEMENT**

6 Defendant has not completed its investigation and discovery in this action.
7 The responses herein are based only upon Defendant's knowledge as of the date of
8 these responses, and are given without prejudice to Defendant's right to produce
9 subsequently discovered information or documents.

10
11 **GENERAL OBJECTIONS**

12 The following general objections are expressly incorporated into each of the
13 specific responses set forth below:

14 A. Defendant objects to producing any information or documents which
15 constitute, reflect, or contain communications with counsel on the grounds that such
16 communications are protected from discovery by virtue of the attorney-client
17 privilege and/or the joint defense privilege. Defendant further objects to each
18 interrogatory to the extent that it calls for information or documents which reflect or
19 contain attorney work product on the grounds that such information or documents are
20 protected from discovery by virtue of the attorney work product doctrine.

21 B. Defendant objects to each interrogatory to the extent that it is overbroad
22 and subjects Defendant to unreasonable and undue annoyance, oppression, burden,
23 and expense, and seeks information which is not relevant to the subject matter of this
24 lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence.

25 C. Defendant objects to each interrogatory to the extent that it seeks materials
26 or information which are not in the possession, custody or control of Defendant,
27 and/or which are equally or more readily available to Plaintiff.

1 D. Defendant objects to each interrogatory to the extent that it is
2 unreasonably cumulative and duplicative of other discovery in this action.

3 E. Defendant objects to each and every interrogatory to the extent that it
4 seeks proprietary information, trade secrets, or information subject to protective
5 orders, confidentiality agreements, rights of privacy or statutory provisions that bar
6 the disclosure of that information without the consent of third parties.

7 F. Defendant objects to Plaintiff's "Instructions" and each and every
8 interrogatory to the extent that they seek to impose burdens upon Defendant in excess
9 of what is required under the Federal Rules of Civil Procedure.

10 G. Defendant objects to Plaintiff's definitions of the defined terms
11 "COLLINS," "YOU" and "YOUR" as overbroad, vague and ambiguous. Unless
12 otherwise indicated, all responses are made solely on behalf of Collins Financial
13 Services, Inc.

14 15 **RESPONSES TO INTERROGATORIES**

16 17 **INTERROGATORY NO. 1:**

18 Please identify the number of persons and entities in the United States who you
19 contacted for the purposes of debt collection from July 31, 2007 to the present.

20 [Definitions omitted].

21 **RESPONSE TO INTERROGATORY NO. 1:**

22 Zero.

23 24 **INTERROGATORY NO. 2:**

25 Please state the name(s), business address(es), and job title(s) or capacity(ies)
26 of the officer(s), employee(s), or agent(s) answering or providing any information
27 used to answer each Interrogatory.

RESPONSE TO INTERROGATORY NO. 2:

Subject to and without waiving the General Objections, Defendant responds as follows:

Ms. Tina Thomas
Vice President
2101 W. Ben White Blvd.
Austin, TX 78701

Ms. Thomas may be contacted exclusively through counsel for Defendant.

INTERROGATORY NO. 3:

Please state the form of COLLINS' organization, including all subsidiaries and affiliates, and the date and place the organization was organized and registered and/or licensed to do business.

RESPONSE TO INTERROGATORY NO. 3:

Subject to and without waiving the General Objections, Defendant responds as follows: Collins Financial Services, Inc. is a Texas corporation incorporated in 1996. It is licensed to do business in appropriate jurisdictions.

INTERROGATORY NO. 4:

Please describe COLLINS' procedures and policies for receiving debt related information from the entity COLLINS purchases debt from.

RESPONSE TO INTERROGATORY NO. 4:

Defendant objects to this Interrogatory on the grounds that it is vague and ambiguous as to the terms "receiving debt related information." Defendant also objects to this Interrogatory on the grounds that it is overbroad, unduly burdensome and oppressive, and to the extent that it seeks information which is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of admissible evidence. Defendant further objects to this Interrogatory to the extent that it seeks proprietary information, trade secret information, information subject to protective orders, confidentiality agreements, or statutory provisions that bar the

1 disclosure of that information without the consent of third parties and to the extent
2 that it seeks information subject to the attorney-client privilege or the attorney work
3 product doctrine.

4 Subject to and without waiving the forgoing objections or the General
5 Objections, based upon its understanding of this Interrogatory, Defendant hereby
6 exercises its option to produce business records that are responsive, pursuant to Rule
7 33(d) of the Federal Rules of Civil Procedure. Defendant is willing to meet and
8 confer with Plaintiff regarding any further response.

9
10 **INTERROGATORY NO. 5:**

11 Please describe COLLINS' procedures and policies for verifying debt related
12 information from the entity COLLINS purchases debt from.

13 **RESPONSE TO INTERROGATORY NO. 5:**

14 Defendant objects to this Interrogatory on the grounds that it is vague and
15 ambiguous as to the term "verifying debt related information." Defendant also objects
16 to this Interrogatory on the grounds that it is overbroad, unduly burdensome and
17 oppressive, and to the extent that it seeks information which is not relevant to the
18 subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
19 admissible evidence. Defendant further objects to this Interrogatory to the extent that
20 it seeks proprietary information, trade secret information, information subject to
21 protective orders, confidentiality agreements, or statutory provisions that bar the
22 disclosure of that information without the consent of third parties and to the extent
23 that it seeks information subject to the attorney-client privilege or the attorney work
24 product doctrine.

25 Subject to and without waiving the forgoing objections or the General
26 Objections, based upon its understanding of this Interrogatory, Defendant hereby
27 exercises its option to produce business records that are responsive, pursuant to Rule
28

1 33(d) of the Federal Rules of Civil Procedure. Defendant is willing to meet and
2 confer with Plaintiff regarding any further response.

3
4 **INTERROGATORY NO. 6:**

5 Please describe COLLINS' procedures and policies for investigating the
6 addresses of alleged debtors prior to attempting contact.

7 **RESPONSE TO INTERROGATORY NO. 6:**

8 Collins does not attempt to contact debtors and therefore does not have any
9 policies or procedures that are responsive to this Interrogatory.

10
11 **INTERROGATORY NO. 7:**

12 Please describe COLLINS' procedures and policies for determining the amount
13 COLLINS demands from alleged debtors, including but not limited to, the method of
14 calculating the principal owed, interest assessed and penalties applied,

15 **RESPONSE TO INTERROGATORY NO. 7:**

16 Collins does not make demands of debtors and therefore has no procedures or
17 policies that are responsive to this Interrogatory.

18
19 **INTERROGATORY NO. 8:**

20 Please describe COLLINS' procedures and policies for settling outstanding
21 alleged debts from alleged debtors.

22 **RESPONSE TO INTERROGATORY NO. 8:**

23 Collins does not settle debts with debtors and therefore has no responsive
24 policies or procedures.

25
26 **INTERROGATORY NO. 9:**

27 Please identify all law firms that COLLINS retained - from July 31, 2006 to the
28 present - for the purpose of collecting debts.

1 **RESPONSE TO INTERROGATORY NO. 9:**

2 Collins does not retain law firms.

4 **INTERROGATORY NO. 10:**

5 Please identify all lawsuits for breach of contract, Rule 3.740 collections cases,
6 violations of the FDCPA and violations of the Rosenthal Act -by caption, court, civil
7 action number, and result - that COLLINS is or has been a party to since July 31,
8 2006.

9 **RESPONSE TO INTERROGATORY NO. 10:**

10 Defendant objects to this Request on the grounds that it is compound.
11 Defendant also objects to this Interrogatory on the grounds that it is overbroad,
12 unduly burdensome and oppressive, and seeks information which is not relevant to
13 the subject matter of this lawsuit, nor reasonably calculated to lead to the discovery of
14 admissible evidence. Complaints which include unsubstantiated allegations made by
15 other debtors regarding other sets of facts have no bearing on the claims or defenses
16 in this action. Defendant also objects to this Interrogatory on the grounds that the
17 information requested, if any exists, is a matter of public record, equally available to
18 Plaintiff.

20 **INTERROGATORY NO. 11:**

21 Did COLLINS make any substantive change in company policy from July 31,
22 2006 to the present? If so, please identify and describe any substantive changes
23 COLLINS made – from July 31, 2006 to the present – to any COLLINS policy or
24 procedure in an effort to comply with the provision of the Federal [sic] Debt
25 Collection Practices Act.

26 **RESPONSE TO INTERROGATORY NO. 11:**

27 Collins does not attempt to collect debts from consumers and thus it is not
28 subject to the FDCPA. Collins has no procedures responsive to this Interrogatory.

1 **INTERROGATORY NO. 12:**

2 Please describe the compensation agreements between COLLINS and any law
3 firm COLLINS uses to file complaint against alleged debtors for breach of contract.

4 **RESPONSE TO INTERROGATORY NO. 12:**

5 Collins does not have compensation agreements with law firms.
6

7 **INTERROGATORY NO. 13:**

8 Please identify COLLINS' policies and procedures for when a 1692g notice is
9 returned to COLLINS undelivered.

10 **RESPONSE TO INTERROGATORY NO. 13:**

11 Collins does not communicate with debtors in connection with collecting
12 debts, and thus it does not send 1692g notices. It therefore has no policies or
13 procedures that are responsive to this Interrogatory.
14

15 **INTERROGATORY NO. 14:**

16 Please identify the documents COLLINS relied upon to confirm the amount of
17 David Tourgeman's debt.

18 **RESPONSE TO INTERROGATORY NO. 14:**

19 Subject to and without waiving the forgoing objections or the General
20 Objections, pursuant to Federal Rule of Civil Procedure 33(d), Defendant will
21 produce non-privileged, responsive documents in its possession, custody or control.
22

23 **INTERROGATORY NO. 15:**

24 Please identify all trade associations relating to debt collection to which
25 COLLINS belongs.

26 //
27
28

1 **RESPONSE TO INTERROGATORY NO. 15:**

2 Defendant objects to this Interrogatory on the grounds that it is overbroad,
3 unduly burdensome and oppressive, and to the extent that it seeks information which
4 is not relevant to the subject matter of this lawsuit, nor reasonably calculated to lead
5 to the discovery of admissible evidence.

6
7 **INTERROGATORY NO. 16:**

8 Please identify the number of letters threatening legal action COLLINS sent in
9 each calendar year from 2005 to the present.

10 **RESPONSE TO INTERROGATORY NO. 16:**

11 Zero.

12
13 **INTERROGATORY NO. 17:**

14 Please describe the position at COLLINS that prepares the affidavit authorizing
15 legal action against an alleged debtor, including but not limited to the position's
16 duties, responsibilities, job requirements, and the number of people who perform this
17 task for COLLINS.

18 **RESPONSE TO INTERROGATORY NO. 17:**

19 Collins did not prepare an affidavit relating to this action.

20
21 **INTERROGATORY NO. 18:**

22 Please describe the process COLLINS uses to skip trace debtors in the event of
23 a debtor's address or phone number change.

24 **RESPONSE TO INTERROGATORY NO. 18:**

25 Collins does not skip trace debtors.

26 //

27 //

28 //

1 **INTERROGATORY NO. 19:**

2 If COLLINS' response to Plaintiff David Tourgeman's Requests for Admission
3 (Set One) Request 3 served concurrently with Plaintiff David Tourgeman's Special
4 Interrogatories is anything other than an unqualified admission, please explain the
5 basis for COLLINS' denial.

6 **RESPONSE TO INTERROGATORY NO. 19:**

7 Defendant incorporates by reference its objections and response to Request for
8 Admission No. 3. Collins does not communicate with debtors in an attempt to collect
9 from debtors so this Request has been denied.

10
11 **INTERROGATORY NO. 20:**

12 If COLLINS' response to Plaintiff David Tourgeman's Requests for Admission
13 (Set One) Request 11 served concurrently with Plaintiff David Tourgeman's Special
14 Interrogatories is anything other than an unqualified admission, please explain the
15 basis for COLLINS' denial.

16 **RESPONSE TO INTERROGATORY NO. 20:**

17 Defendant incorporates by reference its objections and response to Request for
18 Admission No. 11. Collins does not communicate with debtors nor does it file
19 lawsuits in an attempt to collect from debtors, so this Request has been denied.

20
21 DATED: May 5, 2009

SIMMONDS & NARITA LLP
MICHAEL R. SIMMONDS
TOMIO B. NARITA
JEFFREY A. TOPOR

22
23
24
25 By: _____

26 Tomio B. Narita
27 Attorneys for Defendants
28 Collins Financial Services, Inc. and
Nelson & Kennard

VERIFICATION

I, Tina Thomas, state that am authorized to make this verification on behalf of defendant Collins Financial Services, Inc. I have read the foregoing **DEFENDANT COLLINS FINANCIAL SERVICES, INC. RESPONSE TO PLAINTIFF'S SPECIAL INTERROGATORIES, SET ONE**, and I know the contents thereof. To the extent that I have personal knowledge of the facts contained therein, the same are true and correct. Insofar as the facts are based upon a composite of information of many individuals, I do not have personal knowledge concerning all of the information contained in the responses, but I am informed and believe that the matters stated in said responses for which I do not have personal knowledge are true and correct. I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 4, 2009 at Austin, Texas.

Gina Thomas

Tina Thomas

1 PROOF OF SERVICE

2 I, the undersigned, declare:

3
4 I am employed in the City and County of San Francisco, California. I
5 am over the age of eighteen years and not a party to this action. My business
6 address is 44 Montgomery Street, Suite 3010, San Francisco, California 94104-
4816.

7 I am readily familiar with the business practices of my employer,
8 Simmonds & Narita LLP, for the processing of correspondence by mailing with
9 the United States Postal Service and that said correspondence is deposited with the
10 United States Postal Service that same day in the ordinary course of business.

11 On this date, I served a copy of the following document:

- 12 1) **DEFENDANT COLLINS FINANCIAL SERVICES, INC.**
13 **RESPONSE TO PLAINTIFF'S SPECIAL**
14 **INTERROGATORIES, SET ONE**

15 by causing such document to be mailed to the address indicated below:

16 VIA U.S. MAIL

17
18 Daniel P. Murphy
19 4691 Torrey Circle A306
20 San Diego, CA 92130
counsel for Plaintiff

21 Francis A. Bottini
22 Frank J. Johnson
23 Derek J. Wilson
24 Johnson Bottini, LLP
25 655 West Broadway, Suite 1400
San Diego, CA 92101
counsel for Plaintiff

26 //

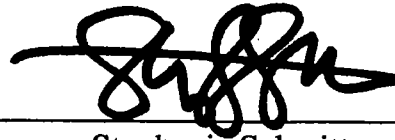
27 //

28 //

//

1 Scott J. Ferrell and Lisa A. Wegner
2 Call, Jensen & Ferrell, P.C.
3 610 Newport Center Dr., Suite 700
4 Newport Beach, CA 92660
5 counsel for defendants Dell Financial Services, LLC,
6 DFS Acceptance and DFS Production

7 I declare under penalty of perjury that the foregoing is true and
8 correct. Executed at San Francisco, California on this 5th day of May, 2009.

9
10 

11 Stephanie Schmitt
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28